

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
V.)	CV-09-BE-2423-E
)	
JAMES J. STRICKER, et al.,)	
)	
DEFENDANTS.)	
)	
)	

DEFENDANT MONSANTO COMPANY’S MOTION TO DISMISS

Defendant Monsanto Company (“Monsanto”) moves the Court, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the Complaint for failure to state a claim upon which relief can be granted. This motion is based upon the complaint, the exhibits attached hereto, and Monsanto’s brief in support of this motion, which is being filed contemporaneously with this motion. The complaint fails to state a claim and should be dismissed because, under the Federal Claims Collection Act’s three-year limitations period for actions “founded upon a tort,” the government’s claims under the Medicare Secondary Payer Act accrued more than three years ago.

For these reasons, Defendant respectfully requests that the Court grant its motion to dismiss.

Respectfully submitted,

s/ Matthew H. Lembke
One of the Attorneys for Defendant
Monsanto Company

OF COUNSEL:

J. Mark White
Augusta S. Dowd
Linda G. Flippo
White Arnold & Dowd P.C.
2025 Third Avenue North, Suite 500
Birmingham, AL 35203
205-323-1888

Matthew H. Lembke
Ty E. Dedmon
Andrew L. Brasher
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
205-521-8000

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Cathy J. Burdette
J. Christopher Kohn
Ruth A. Harvey
US DEPARTMENT OF JUSTICE, CIVIL DIVISION
Ben Franklin Station
PO Box 875
Washington , DC 20044
202-616-2316
Fax: 202-514-9163
Email: cathy.burdette@usdoj.gov

Joyce White Vance
Richard E. O'Neal
US ATTORNEY'S OFFICE
1801 4th Avenue North
Birmingham , AL 35203-2101
1-205-244-2001
Fax: 1-205-244-2175
Email: joyce.vance@usdoj.gov
Richard.O'Neal@usdoj.gov

John T. McConkie
UNITED STATES DEPARTMENT OF JUSTICE
1100 L Street, NW
Washington , DC 20005
202-307-0244
Fax: 202-307-0494
Email: John.T.McConkie@usdoj.gov

J. Gusty Yearout
Yearout & Traylor, PC
3300 Cahaba Road
Suite 300
Birmingham, Alabama 35223

gyearout@yearout.net
Counsel for:
Don Barrett
The Barrett Law Firm, PA
Charles E. Fell, Jr.
Charles Cunningham, Jr.
Cunningham & Fell PLLC

George P. Ford
Ford, Howard & Cornett, PC
PO Box 388
Gadsden, AL 35902
256-546-5432
Fax: 256-546-5435
Email: george@fordhowardcornett.com
Counsel for:
Cusimano, Keener, Roberts & Raley, PC
Greg Cusimano

William S. Cox, III
Kevin E. Clark
Wesley B. Gilchrest
Lightfoot, Franklin & White, LLC
The Clark Building
400 North 20th Street
Birmingham, AL 35203
205-581-0700
Counsel for:
Pharmacia Corporation

Vernon L. Wells, II
J. David Moore
Walston Wells & Birchall, LLP
One Federal Place
1819 Fifth Avenue South
Suite 1100
Birmingham, AL 35203
Counsel for:
Solutia Inc.

J. Mark White
Augusta S. Dowd
Linda G. Flippo
White Arnold & Dowd P.C.
2025 Third Avenue North, Suite 500
Birmingham, AL 35203
205-323-1888
Counsel for:
American International Group, Inc.
Travelers Indemnity Company

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Kasowitz, Benson, Torres & Friedman LLP
Daniel R. Benson
James J. Stricker
1633 Broadway
New York, New York 10019

Donald W. Stewart
1000 Quintard Ave.
Anniston, Alabama 36202

Johnston Druhan, LLP
5 Dauphine St.
Suite 201
Mobile, Alabama 36602

The Cody Law Firm, PC
Lorna Oaks Professional Center
3141 Lorna Rd.
Suite 202
Birmingham, Alabama 35216

s/ Matthew H. Lembke

Matthew H. Lembke